



News Release

U.S. DEPARTMENT OF LABOR ANNOUNCES RULEMAKING ON DISCRETIONARY REVIEW OF BOARD OF ALIEN LABOR CERTIFICATION APPEALS CASES

WASHINGTON, DC – The U.S. Department of Labor today announced that it is jointly issuing, with the Department of Homeland Security (DHS), a [notice of proposed rulemaking](#) and identical [direct final rule](#) on a proposal to extend the Department’s recently established system of discretionary secretarial review to H-2B temporary labor certification cases pending before or decided by the Department’s Board of Alien Labor Certification Appeals (BALCA).

The Department created BALCA in 1987 by regulation to streamline and promote uniformity in Administrative Law Judge decisions pertaining to the Department’s foreign labor certification programs. When BALCA was established, there was no mechanism in place to allow the Secretary of Labor to exercise appropriate oversight over the decisions that BALCA issues pursuant to the authority delegated to it by the Secretary.

On February 21, 2020, the Department addressed this deficiency by issuing a direct final rule and a notice of proposed rulemaking that amended various departmental regulations to establish systems of discretionary secretarial review over cases pending before, and decisions issued by, BALCA. Following a comment period, the Department published the final rule on May 20, 2020 and became effective on June 19, 2020. The purpose of the rule issued today is to apply this process to the H-2B program.

The proposed rule and the direct final rule preserve existing processes by which BALCA considers and decides cases, while also giving the Secretary discretion to decide a case where he determines appropriate. The rule preserves existing safeguards to ensure a fair process for the parties in cases where discretionary review is exercised by the Secretary.

The comment period on the rule closes on January 19, 2021. If the Department does not receive significant adverse comments, the rule will take effect 15 days later.

The mission of the Department of Labor is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

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